

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 36216

KENNETH M. WORKMAN,)	2010 Unpublished Opinion No. 332
)	
Petitioner-Appellant,)	Filed: January 28, 2010
)	
v.)	Stephen W. Kenyon, Clerk
)	
STATE OF IDAHO,)	THIS IS AN UNPUBLISHED
)	OPINION AND SHALL NOT
Respondent.)	BE CITED AS AUTHORITY
)	

Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. Deborah A. Bail, District Judge.

Order summarily dismissing successive application for post-conviction relief, affirmed.

Kenneth M. Workman, Boise, pro se appellant.

Hon. Lawrence G. Wasden, Attorney General; Jessica M. Lorello, Deputy Attorney General, Boise, for respondent.

MELANSON, Judge

Kenneth M. Workman appeals from the district court's order summarily dismissing his successive application for post-conviction relief, without an evidentiary hearing. For the reasons set forth below, we affirm.

Workman was convicted of two counts of aggravated driving under the influence (DUI), I.C. § 18-8006, and being a persistent violator, I.C. § 19-2514, and was sentenced to two fixed life sentences. This Court affirmed Workman's judgment of conviction and sentences in an unpublished opinion. *State v. Workman*, Docket No. 28864 (Ct. App. July 1, 2004). Workman also filed motions with the district court to correct an illegal sentence, for relief from restitution, and to disqualify the public defender from representing him and appoint new counsel. The district court denied these motions, and this Court affirmed the denials in a second unpublished opinion. *See State v. Workman*, Docket No. 31022 (Ct. App. Sept. 13, 2005).

Workman subsequently filed a pro se application for post-conviction relief and sought the appointment of counsel. Workman alleged that his guilty plea was invalid because he was under the influence of antipsychotic medication when he entered his plea and that he did not actually enter a guilty plea. Workman also claimed ineffective assistance of counsel. The district court summarily dismissed Workman's application because he had failed to provide sufficient evidence substantiating his claims. Having concluded that there were no potentially meritorious claims, the district court also denied Workman's motion for appointment of counsel. The Idaho Supreme Court affirmed the summary dismissal of Workman's application in *Workman v. State*, 144 Idaho 518, 164 P.3d 798 (2007).

Two months later, Workman filed a successive application for post-conviction relief alleging ineffective assistance of appellate counsel, double jeopardy violations for charging him with two counts of aggravated DUI arising from a single incident, and that his sentences constitute cruel and unusual punishment. The district court gave notice of its intent to dismiss Workman's successive application as he had failed to provide a sufficient reason for his failure to raise these issues in his initial application for post-conviction relief. Workman responded that his failure was due to lack of access to the Idaho Reports. The state responded that Workman, at all relevant times, had access to legal materials meeting constitutional standards. The state also provided evidence in the form of a letter from the Idaho Department of Corrections (IDOC), that the access to legal materials provided to offenders by IDOC met constitutional guidelines. Additionally, the letter provided that, while offenders did not have access to Idaho Reports through IDOC resource centers, they could contact the Supreme Court Law Library for any necessary materials. Accordingly, the district court summarily dismissed Workman's successive application for post-conviction relief for his failure to provide a sufficient reason for not raising the issues in his initial application. Workman appeals.

Workman argues that he did not know of the issues he raised in his successive application until he had access to the Idaho Reports. He alleges that his ignorance of the law prohibited him from raising these issues in his initial application. The state responds that Workman was provided with constitutionally-mandated access to legal materials and, furthermore, was not required to cite case law in his initial application.

Idaho Code Section 19-4908 provides:

All grounds for relief available to an applicant under [the Uniform Post-Conviction Procedure Act] must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding the applicant has taken to secure relief may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental, or amended application.

The Idaho Supreme Court has further explained the meaning of I.C. § 19-4908:

Idaho Code § 19-4908 requires that all legal and factual grounds for relief must be raised in the first petition for post-conviction relief. Any grounds for relief not raised are permanently waived if the grounds were known or should have been known at the time of the first petition. Subsequent petitions are allowed if the [applicant] states a sufficient reason for not asserting the grounds in the earlier petition.

Stuart v. State, 118 Idaho 932, 933-34, 801 P.2d 1283, 1284-85 (1990). In *Hooper v. State*, 127 Idaho 945, 908 P.2d 1252 (Ct. App. 1995), this Court affirmed the summary dismissal of Hooper's successive application for post-conviction relief. In that case, this Court held that Hooper had failed to satisfy his "burden of providing the district court with factual reasons upon which the court could conclude there was a 'sufficient reason' why the grounds for relief asserted in his second petition were 'not asserted or were inadequately raised in the original, supplemental or amended application.'" *Id.* at 948, 908 P.2d at 1255, *quoting* I.C. § 19-4908.

The United States District Court for the District of Idaho has held that the legal resource materials made available to Idaho inmates meet constitutional requirements. *See Meza-Sayas v. Conway*, CV-04-375-S-MHW, 2007 WL 20601086 (D. Idaho 2007) (unreported opinion). This included access to applicable sections of the Idaho Code and a manual on post-conviction remedies. According to the evidence before the district court, at that time Workman also had access to the State Law Library to receive some additional materials, including case law. Additionally, we are not persuaded by Workman's contention that he needed access to Idaho Reports in order to raise an issue of ineffective assistance of counsel which he had previously raised in his initial application or to raise an issue regarding the legality of his sentences after he had twice challenged the length and legality of his sentences on direct appeal. Furthermore, Workman's lack of access to the Idaho Reports was not essential to raise his double jeopardy claim. Workman has failed to meet his burden of showing that a lack of access to the Idaho

Reports constituted a sufficient reason for his failure to raise these issues in his initial application for post-conviction relief. Therefore, the district court did not err by summarily dismissing his claims. We have also reviewed the other issues raised by Workman and conclude that they are meritless, and we need not discuss them further. Accordingly, the district court's order summarily dismissing Workman's successive application for post-conviction relief, without an evidentiary hearing, is affirmed. As the prevailing party, costs, but not attorney fees, are awarded to the respondent on appeal.

Judge GRATTON, **CONCURS.**

Chief Judge LANSING, **SPECIALLY CONCURRING**

I concur in the foregoing opinion but write separately to further explain my decision.

Workman argues that he has shown a "sufficient reason" for failure to include the present claims in his initial post-conviction application because he did not have access to the Idaho Reports from which he could do the research that enabled him to discover these claims. His argument is refuted by the United States Supreme Court's decision in *Lewis v. Casey*, 518 U.S. 343 (1996), where the Court said:

It must be acknowledged that several statements in *Bounds* [*v. Smith*, 430 U.S. 817 (1977)] went beyond the right of access recognized in earlier cases on which it relied, which was a right to bring to court a grievance that the inmate wished to present. These statements appear to suggest that the state must enable the prisoner to *discover* grievances and to *litigate effectively* once in court. These elaborations upon the right of access to the courts have no antecedent in our pre-*Bounds* cases and we now disclaim them.

Id. at 354 (citations omitted). The Court has thus held that the constitutional right of access to the courts does not require that inmates be provided resources necessary to enable them to discover bases to challenge their convictions or sentences.

Further, I note that even if the district court had reached the merits of Workman's double jeopardy claim, he would not have been entitled to relief. Workman claims that the constitutional guarantee against double jeopardy was violated when he received two sentences for two counts of aggravated driving under the influence arising from a single accident in which two people were seriously injured as a result of Workman's drunk driving. He contends that the guarantee against double jeopardy precludes the imposition of two sentences for a single act of driving while intoxicated. Workman's argument is contrary to this Court's holding in *State v. Turney*, 147 Idaho 690, 214 P.3d 1169 (Ct. App. 2009), where we said:

. . . I.C. § 18-8006 criminalizes causing great bodily harm, permanent disability, or permanent disfigurement to any person. . . . [B]y enacting I.C. § 18-8006, the legislature sought to protect individual victims and criminalize the unlawful act of causing great bodily harm to another while driving under the influence. Accordingly, in this case, Turney was correctly charged with and punished for two violations of I.C. § 18-8006 and was not, as he contends, placed in double jeopardy for the commission of a single offense.

Id. at 692, 214 P.3d at 1171. Our decision in *Turney* was based upon and adhered to a similar decision in *State v. Lee*, 116 Idaho 515, 777 P.2d 737 (Ct. App. 1989), which upheld the validity of two convictions for vehicular manslaughter for two deaths arising from a single automobile accident. Accordingly, earlier access to the Idaho Reports would not have enabled Workman to present a valid double jeopardy claim as his claim is simply without merit.